IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 521 of 2005

1. Smt. Indira Pandey W/o Late Sri Sanjay Pandey.
2. Sri Girish Chandra Pandey S/o Sri H.B. Pandey.
3. Smt. Kala Pandey W/o Sri Girish Chandra Pandey.
   All R/o Village Kuneda, P.O. Kanda,
   District Bageshwar. …….. Appellants

Versus

1. Sri Harpal Singh S/o Rajendra Singh
   R/o Tanakpur Road, Haldwani,
   District Nainital.
2. The Oriental Insurance Company,
   through its Divisional Manager,
   Divisional Office Haldwani,
   District Nainital. ……..... Respondents

Mr. Pankaj Miglani, Advocate for the appellants.
None for respondent No.1.
Mr. Deepak Rawat, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge, Nainital vide Award dated 02.09.2005 passed in Motor Accident Claim Case No. 228 of 2004.

2. The claimants, who are unfortunate widow and parents of deceased Sanjay Kumar Pandey, claimed compensation of Rs. 15,00,000/- for his death in the motor accident on 27.05.2004 when the scooter bearing registration No. UA01 0419, on which he was travelling as a pillion rider, was dashed by the offending vehicle Truck / Dumper bearing registration No. HR51 GA 1227 resulting in his instantaneous death on the spot itself. The claimants pleaded that

Sanjay Kumar Pandey was aged about 26 years and was drawing salary of Rs. 6,381/- per month as a Police Constable.

3. The owner and the insurer of the offending vehicle Truck / Dumper contested the claim and denied their liability to pay compensation to the claimants. The owner of the offending vehicle Truck / Dumper took the plea that the driver of the Truck / Dumper was not responsible for the accident and that the accident occurred due to the negligence of the scooterist. The insurer, on the other hand, took the plea that the Truck / Dumper was being plied in breach of the policy conditions and that it was a case of contributory negligence.

4. The claimants examined PW1 Smt. Indira Pandey and PW2 Pramod Singh Bisht in support of their claim, whereas the owner and insurer of the offending vehicle Truck / Dumper did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that Sanjay Kumar Pandey died on account of the injuries sustained by him in the motor accident on 27.05.2004; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Truck / Dumper; and the insurer of the Truck / Dumper was liable to pay compensation to the claimants.

6. Relying upon the evidence led by the claimants about the income of the deceased including his salary certificate, the Tribunal assessed his income at Rs. 6,381/- per month and Rs. 76,572/- per annum. After deducting 1/3rd of the said amount as his personal expenses, the claimants' dependency was assessed at Rs. 51,000/- per annum. By multiplying the annual dependency or Rs. 51,000/- with the multiplier of '14', the compensation was worked out to Rs. 7,14,000/-. The Tribunal awarded further sums of Rs. 5,000/- for Loss of Love and Affection and Rs. 6,000/- towards Funeral Expenses. Thus, a total sum of Rs. 7,25,000/- was awarded as

compensation to the claimants for the death of Sanjay Kumar Pandey in the motor accident on 27.05.2004. The Tribunal, further, directed the insurer of the offending vehicle Truck / Dumper to pay interest on the above amount of compensation at the rate of 7% per annum.

7. Mr. Pankaj Miglani, the learned counsel for the appellants submitted that the Tribunal has erred in selecting a lower multiplier of '14' though the age of the deceased, on the date of the accident, was 26 years; in not awarding any sum towards Loss of Consortium to the widow; and in awarding interest at the lower rate of 7% per annum.

8. Mr. Deepak Rawat, the learned counsel for respondent No. 2 Oriental Insurance Company, the insurer of the offending vehicle Truck / Dumper, on the other hand, supported the Award and submitted that the Tribunal has been quite liberal in awarding compensation of Rs. 7,25,000/- to the claimants.

9. The findings recorded by the Tribunal that Sanjay Kumar Pandey died on account of the injuries sustained by him in the motor accident on 27.05.2004; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Truck / Dumper; and the insurer for the Truck / Dumper was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. The appellants, rightly, have no grievance about the assessment of the income of the deceased by the Tribunal, as whatever income was pleaded by the claimants has been accepted by the Tribunal. We, therefore, do not find any infirmity in the assessment of the income of the deceased by the Tribunal at Rs. 6,381/- per month and Rs. 76,572/- per annum. Similarly, the claimants' dependency has been rightly assessed by the Tribunal at Rs. 51,000/- per annum after

deducting 1/3rd of the income of the deceased as his personal expenses.

11. The appellants' main challenge is to the selection of multiplier of '14' by the Tribunal on the ground that deceased Sanjay Kumar Pandey, on the date of the accident, was aged about 26 years and the Second Schedule under Section 163-A of the Motor Vehicles Act prescribes the multiplier of '18' for the age group between 25 years to 30 years. Mr. Deepak Rawat, the learned counsel for respondent No. 2 Insurance Company supported the selection of the multiplier of '14' by the Tribunal placing reliance on the dictum of the Apex Court in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236.**

12. The Apex Court, in the case of **S. Rajapriya** (supra), while considering the appropriate multiplier to be applied in that case, wherein the age of the deceased was 38 years, observed in paras 8 to 10 & 17:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may into live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for

> the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered.
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> 17. Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs 4,50,000 (in round figures). The Tribunal has fixed interest @ 9% per annum from the date of the claim petition. Taking note of the prevailing rate of interest on bank deposits, the same is fixed at 7.5% per annum. It is stated that a sum of Rs 4,00,000 has been deposited pursuant to the order dated 22-3-2004. The balance amount shall be deposited with the Tribunal within four weeks from today. Out of the total deposit 90% of the amount shall be kept in fixed deposit in the name of widow (Respondent 1), minor child (Respondent 2) and the mother (Respondent 3) in the proportion of 35%, 40% and 15% respectively. Rest 10% shall be paid in cash equally to the widow and the mother. Fixed deposits shall be made initially for a period of five years and no withdrawal permitted and only monthly interest will be paid, so far as the fixed deposits in the names of the widow and the mother are concerned. So far as the minor child is concerned, fixed deposit shall be made initially for a period of five years and shall be renewed till the child attains majority. The monthly interest on the deposit shall also be released to the mother as the guardian of the minor."

13. In the present case, the age of deceased Sanjay Kumar Pandey was 26 years on the date of the accident and his widow Smt. Indira Pandey was aged about 24 years. The parents of the deceased were aged 56 years and 50 years respectively as mentioned in the claim petition. The income of the deceased has been assessed by the Tribunal at Rs. 6,381/- per month and Rs. 76,572/- per annum and the claimants' dependency has been assessed at Rs. 51,000/- per annum. Taking all the above relevant broad features of the case into consideration and in view of the above-quoted dictum of the Apex

Court in the case of S. Rajapriya (supra), we are satisfied that the multiplier of '14' selected by the Tribunal, in the present case, was appropriate multiplier and as such, does not call for any interference in this appeal on that score.

14. That apart, what is important in a motor accident claim case is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The compensation of Rs. 7,25,000/- awarded by the Tribunal, in our opinion, is just and proper compensation to the claimants in the facts and circumstances of the present case.

15. The next submission of Mr. Pankaj Miglani, the learned counsel for the appellants that the Tribunal has not awarded any sum towards Loss of Consortium to the widow, deserves consideration. The learned counsel, placing reliance on the dictum of the Apex Court in the case of **Chellammal and others Vs. Kailasam and another** reported in **(2005) 11 SCC 387,** submitted that a sum of Rs. 20,000/- be awarded towards Loss of Consortium to the widow.

16. In our opinion, the Tribunal has erred in not awarding any sum towards Loss of Consortium to the widow. Following the dictum of the Apex Court in the case of Chellammal (supra), we award a sum of Rs. 20,000/- for Loss of Consortium to the widow. Thus, the claimants become entitled to receive a total sum of Rs. 7,45,000/- as compensation for the death of Sanjay Kumar Pandey in the motor accident.

17. The interest awarded by the Tribunal at the rate of 7% per annum, in view of the prevalent rate of interest on the Fixed Deposit with a nationalised bank, does not call for any interference in this appeal.

18. For the foregoing reasons, the appeal filed by the appellants under Section 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part. The compensation of Rs. 7,25,000/- awarded by the Tribunal is enhanced to Rs. 7,45,000/-. The enhanced amount of Rs. 20,000/- (towards Loss of Consortium) shall be paid by the second respondent Insurance Company to claimant No. 1 Smt. Indira Pandey, the widow of the deceased within a period of one month from today.

19. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C. J.)**
13.09.2006 13.09.2006

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